

apply to the circumstances of Mr. Scribner's case, but, assuming that they do, it was not necessary to aver in the bill that such certificates had been filed. An omission to file a certificate would have no effect upon the title of property which he had bought in the name of the firm. If he were the sole member, he became possessed of the title to the copyright. Cases cited in 1 Lindl. Partn. *supra*. It will be observed that the act of April 29, 1833, which was designed to prevent the use of fictitious partnership names, was repealed in chapter 593 of the Session Laws of 1886. The second ground of demurrer which is stated in the brief is that the bill simply alleges that Mr. Scribner deposited within 10 days after publication, in the librarian's office at Washington, two copies of the book, whereas it should also have alleged that the book was published within a reasonable time after the deposit of the copy of the title. The averments in the bill state a compliance with the statutory provisions, and follow the language of the statute, and are more full than those in precedents which have received the sanction of high authority. Curt. Eq. Prec. 38. The demurrers are overruled, with costs, and leave to answer on the next succeeding rule-day.

SESSIONS v. GOULD *et al.*

(Circuit Court, S. D. New York. January 29, 1892.)

1. PATENTS FOR INVENTIONS—INFRINGEMENT—PRELIMINARY INJUNCTION.

When the court is satisfied that defendants intend to manufacture and sell an infringing article, a preliminary injunction will issue, and it is immaterial whether they have already made actual sales, or have only given out samples of the goods which they offer to sell.

2. SAME—DEFENSES.

The defenses of prior public use, and that the patentee appropriated the ideas and models of the real inventor, and falsely averred them to be his own, should not be disposed of on *ex parte* affidavits under a motion for a preliminary injunction, but should be reserved for final hearing.

3. SAME.

Although the patent sued upon is evidently a narrow one, and there appears a possibility that on final hearing it may be found to be without patentable invention, yet the presumption created by the patent, when reinforced by long public acquiescence, is sufficient to warrant a preliminary injunction.

In Equity. Suit by John H. Sessions against William B. Gould and others for infringement of letters patent No. 203,860, issued May 21, 1878, to Charles A. Taylor, for an "improvement in trunk fixtures," and assigned to complainant June 1, 1878; and letters patent No. 255,122, issued March 21, 1882, to John H. Sessions, Jr., "for trunk fasteners," and assigned to the complainant July 1, 1888. Heard on motion for a preliminary injunction. Granted.

Chas. E. Mitchell, for complainant.

Briesen & Knauth, for defendants.

LACOMBE, Circuit Judge. Except for the fact that in the exhibit marked "Defendants' Catch A" the pin on the upper catch-plate is not cast with the plate, and in the exhibit "Defendants' Catch B" there is no pin at all, these catches are manifestly counter-parts of complainant's goods, and infringements of the patents sued upon. A careful examination of the affidavits and circulars leaves little doubt in my mind that, unless restrained by injunction, the defendants intend to manufacture and sell such goods. Whether they have already made actual sales, or have only given out samples of goods which they offer to sell, is immaterial, where there is reasonable ground to apprehend that they are about to sell the infringing articles. *White v. Heath*, 10 Fed. Rep. 291. If in fact they have no such intention, a preliminary injunction will do them no harm, and they cannot complain if by making and parting with Exhibits A and B, (and they do not deny that they did so,) and by issuing circulars to the trade, they have induced a belief that such is their intention.

The testimony as to the acquiescence of the public for many years in the validity of the patents sued upon is convincing, and sufficiently fortifies the presumption arising from the patents themselves to warrant the granting of a preliminary injunction. The contention that, in view of the prior state of the art, they do not disclose any patentable invention, is not sufficiently clear and convincing to overthrow the case made out by the patents themselves and the public acquiescence in their validity. The defenses of prior public use, and (as to the Sessions, 1882, patent) that the patentee appropriated the ideas and model of the real inventor, and falsely averred them to be his own, should not be disposed of on *ex parte* affidavits, but reserved for final hearing.

The defendants' goods (Exhibits A and B) embody the improvement of the Taylor patent of 1878, covering the clutching device of a loop, engaging over a shoulder projecting from the upper catch, thereby securing a wider and stronger bearing than did the dowel engaging with a hole in the tang of the upper-catch, as arranged in his patent of 1872. The absence of the cast pin of the upper catch, whose sole function is to assist in fastening the upper catch to the valence, is in my opinion immaterial, because the second claim of the 1878 patent does not include the pin, but only the fastening devices, irrespective of the method of applying them to the trunk itself. It is for "a trunk catch or fastening, consisting of the plate, O, having thereon the lug or shoulder, L, the plate, G, and the snap-loop, J, substantially; as and for the purposes specified." The plate, G, as shown in the specification, is arranged so as to be affixed to the trunk, and has on it "a box or recess, H, for containing the spring, I, and through which box or recess passes the cross-bar of the loop, J, having thereon a cam or eccentric, K, resting on the spring, I." That in the complainant's patent the recess and plate are separate castings, riveted together, while in the defendants' goods the same box-bearing plate is produced in a single casting, is immaterial. The same result is accomplished, and in the same way. No doubt the patent sued on is a narrow one, and on final hearing it may appear that

there was not sufficient patentable invention in substituting the snap-loop engaging with a shoulder for the dowel engaging with a hole in a tang to warrant the granting of a patent; but on the case made here, of such long-continued public acquiescence, it is to be assumed that it was a meritorious improvement, which defendants should not be allowed to infringe, although they may, by substituting one casting for two, have themselves made an improvement in the method of producing the completed plate. Infringement of the Sessions patent is too plain for discussion, if that patent is valid, and, for the reasons above indicated, it must be assumed to be so at this stage of the case.

Complainant may take injunction under claim 2 of the Taylor patent of 1878, and the Sessions patent of 1882, with a clause reserving right to sell any and all goods made by complainant himself.

MACK v. LEVY *et al.*

(*Circuit Court, S. D. New York. March 21, 1892.*)

PATENTS FOR INVENTIONS—INFRINGEMENT—OPERA-GLASS HOLDERS.

It is doubtful whether letters patent No. 268,112, issued November 28, 1882, for an improved opera-glass holder, consisting of a detachable handle, provided with a fastening device consisting of a piston hook and notch on the end, brought together by a spring operated by longitudinal action, are infringed by a fastening device consisting of two jaws, one pronged or bifurcated, and the other with a uniform surface made to hold the bar of the opera-glass, substantially by lateral pressure, by means of a piston screw.

In Equity. Under a bill filed by William Mack, an injunction was granted May 20, 1890, restraining Levy, Dreyfus & Co. from infringing a patent by making several forms of opera-glass holders denominated "A," "B," etc., but excepting "C," in which the hook and notch of the patent do not exist, but consist of a detachable screw loop, the open ends of which were screwed together, (see 43 Fed. Rep. 69.) Motion to attach them for contempt in manufacturing a holder consisting of two jaws, etc. Denied.

H. A. West, for plaintiff.

James A. Hudson, for defendants.

SHIPMAN, District Judge. This is a motion for attachment for contempt by reason of the alleged violation of the injunction order of this court against the infringement of letters patent No. 268,112, dated November 28, 1882, to William Mack, for an opera-glass holder. The opinion of the court in the original case gives a description of the invention and the construction of the patent. 43 Fed. Rep. 69. The invention of the plaintiff is popular with the public, if the number of imitations is a fair criterion of its success. The defendants' opera-glass holder, at the sale of which the present motion is directed, consists of a detachable handle, made in telescopic sections, the end section being provided with